

DEPARTMENT OF THE ENVIRONMENT  
AIR AND RADIATION MANAGEMENT ADMINISTRATION

**RESPONSE TO COMMENTS**

for the

PUBLIC HEARING held on September 16, 2009  
in BALTIMORE, MD

related to Proposed Changes to  
the Vehicle Emissions Inspection Program under COMAR 11.14.08

Purpose of Hearing: The purpose of the hearing was to allow for public comment on the Department's proposal to make changes to the Vehicle Emissions Inspection Program (VEIP) Program .

The primary purpose of the proposed action is to update the Vehicle Emissions Inspection Program (or VEIP) regulations to reflect changes to the program that will be initiated in Fall 2009, including:

- Elimination of the IM240 dynamometer test;
- Mandatory gas cap testing for vehicles undergoing the idle test;
- Revised idle test standards for certain model year vehicles;
- Re-establishment of the Fleet Inspection Station program; and
- New equipment requirements for Certified Emissions Repair Facilities.

Date and Location: The public hearing was held on September 16, 2009 at 10:00 a.m., at 1800 Washington Boulevard, 1<sup>st</sup> Floor Aeris Conference Room, Baltimore MD 21230.

Hearing Officer: Deborah Rabin, Regulations Coordinator, Air and Radiation Management Administration, served as Hearing Officer.

Attendance: No one attended the public hearing.

Statement: The Department's statement was submitted into the record by Marcia Ways, Program Manager for the Mobile Sources Control Program of the Air and Radiation Management Administration, Department of the Environment.

Comments Received: The only comments received during the 30-day comment period were from Region 3 of the Environmental Protection Agency.

Comments and Responses: The comments received by the Department during the 30-day comment period that relate to the proposed action have been summarized and the Department's responses are given below.

**1. COMMENT:** The Environmental Protection Agency (EPA) wanted to raise one issue that is not addressed in the proposed VEIP modification rulemaking, regarding Maryland's waiver cost limits for vehicles qualifying for a waiver, under the waiver criteria of the Clean Air Act (the Act) in Section 182(3)(C)(iii) and the Federal inspection and maintenance (I/M) program rule at 40 CFR 51.360(a). Specifically, EPA's I/M rule requires that enhanced I/M programs, such as Maryland's VEIP, require motorists to make an expenditure of at least \$450 in repairs (as adjusted by the Consumer Price Index). In a recent audit of state I/M programs by EPA's Inspection General (IG) on Report No. 2007-P-00001 - "EPA's Oversight of the Vehicle Inspection and Maintenance Program Needs Improvement," dated October 5, 2006, the IG specifically identified Maryland's lower waiver rate, and recommended that Maryland revise its legal authority for the VEIP program to allow a higher limit. In response to the IG report, the Maryland Department of the Environment (MDE) indicated that it would pursue the necessary legal authority change with the Maryland General Assembly, and that MDE anticipated that the change to its waiver limit requirements would coincide with other program adjustments upon renegotiation of its VEIP testing contract. MDE has not obtained the necessary legal authority change in any of the legislative sessions dating to 2007.

**RESPONSE:** The regulation revision reflects current Maryland VEIP statute. Section 23-202(c) of the Transportation Article, Annotated Code of Maryland, requires a minimum repair expenditure of \$450. Should the enabling statute be changed by the Maryland General Assembly, the VEIP regulations will be changed accordingly.

**2. COMMENT:** We also want to comment on the modification of the program inspection regimen, in particular the move from transient, IM240 testing to steady-state, idle testing for 1984-1995 model year vehicles. It is unclear if Maryland has analyzed the impact of the various inspection method changes, in terms of their impacts on the emissions reductions associated with the program. While EPA's policy does encourage states to incorporate on-board diagnostic (OBD) testing, and does not prohibit states from elimination of tailpipe testing, when states can do so without adverse impact, it is not clear if MDE has conducted such an analysis. The elimination of pre-1996 IM240 testing will result in some loss of nitrogen oxide (NOx) emissions reductions, as the replacement idle test for these older vehicles does not measure NOx. The proposed rule and accompanying technical support document does not contain a demonstration that the program continues to achieve the reductions expected of an enhanced I/M program.

At a minimum, the revised VEIP should be evaluated to ensure that it meets the anti-backsliding requirements under section 110(l) of the Clean Air Act. Section 110(l) states that "the Administrator shall not approve a revision of a SIP if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171) or any other applicable requirement of the Act." Anti-backsliding is further discussed in EPA's Provisions for Implementation of the 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) in 40 CFR 51, Subpart X.

Specifically, 40 CFR 51.905(a)(1) defines which 1-hour ozone requirements remain applicable in an area designated nonattainment at the time the 1-hour standard was revoked and designated nonattainment for the 1997 8-hour standard. This includes the Maryland portions of the Washington, Baltimore and Philadelphia (Cecil County) areas. The applicable requirements are defined by 40 CFR 51.900(f)(1)-(12) and include I/M programs in §51.900(f)(2). In essence, Maryland needs to demonstrate that it will continue to have an enhanced I/M program that meets the definition for such a program, under EPA's I/M Rule in 40 CFR Part 51, Subpart S.

**RESPONSE:** The Department is working on a 110(l) demonstration to ensure that these program changes will not impede Maryland's overall ability to meet the ozone air quality standard.

**3. COMMENT:** Another concern we have is the use of more stringent idle testing cutpoints for 1991-1995 model year vehicles, on the basis of a study based on measurement data from the VEIP and from other idle testing states. EPA's studies in the past have shown that while more stringent idle cutpoints reduce false pass results, they also can result in false fail results for a small portion of tests. EPA has taken a conservative approach in the past to attempt to minimize these false failures. There is also the possibility that setting tighter cutpoints based only on program comparison data, rather than certification-style testing could result in setting cutpoints tighter than the resolution of idle test equipment, leading to uncertainty of the validity of the resulting tests. EPA recommends you monitor the use of these more stringent cutpoints very closely, paying particular attention to unexpectedly large increases in failure rates among newer, pre-OBD vehicles.

**RESPONSE:** MDE will monitor failure rates, and notes that more stringent idle test cutpoints have been in place in other Region 3 states – Virginia and Pennsylvania.

**4. COMMENT:** With respect to the increase in time a vehicle can be operated after failing an initial test, from 8 to 17 weeks, we ask for an explanation to justify the change. Is this a mechanism to lower the rate of disappearing vehicles, a customer service benefit, or is it being done for some other reason. Seventeen weeks seems an inordinate amount of time to complete repairs and to obtain a retest.

**RESPONSE:** The regulation revision reflects current VEIP statute. Section 23-202(c) of the Transportation Article, Annotated Code of Maryland, provides 120 days for repairs following the initial test failure. When the Maryland General Assembly changed the statute to allow the \$450 waiver expenditure for the enhanced VEIP, it also increased the time a vehicle can be operated after failing an initial test to 120 days, to reduce the financial impact. The change was overlooked in the 2002 SIP revision; this action corrects the oversight.

**5. COMMENT:** Self-testing using leased idle test equipment from your testing contractor is another potential area of concern. There is little information on the number of vehicles that will be tested outside the centralized network, and no analysis presented as to potential impact on the results to the program.

**RESPONSE:** The fleet program is small, currently affecting at most 20,000 vehicles per year. Moderate growth is expected as the program is made available to the counties added to the VEIP area in 1995. The fleet facilities will be subject to stringent quality assurance monitoring and auditing, very similar to the central testing stations, including monthly onsite equipment audits. The contractor-supplied test system also provides the State the ability to analyze and run trigger reports on fleet vehicle test records as well as equipment quality control records through the central data system.

**6. COMMENT:** The change of ownership test requirement will lead to a reduction in the number and frequency of tests.

**RESPONSE:** It was determined that the State registration enforcement system proposed for the enhanced program did not provide adequate test history tracking for vehicles that undergo transfer of ownership. Therefore, the State modified the change of ownership test requirement, so that a VEIP test is scheduled approximately 3 months after the date of registration following change of ownership. Future tests are scheduled in 2-year increments from that due date. This procedure does not result in fewer tests and does not alter program effectiveness; therefore, it was handled administratively, outside the scope of regulatory action. The regulation is now being updated as the major program modifications taking place provide the opportunity to bring the entire chapter up to date as necessary.

**7. COMMENT:** Another item of concern is the inclusion of NO<sub>x</sub> testing in the on-highway emissions test (COMAR 11.14.08.19). If NO<sub>x</sub> testing is being eliminated from the VEIP (for pre-1996 vehicles not equipped with OBD), for what purpose will MDE use this data? Is this exclusively for fleet characterization, or does MDE envision its use for follow-up testing, clean/dirty screening, or some other purpose?

**RESPONSE:** The data is for fleet characterization.